SUPREME COURT, U. S.

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MICHAEL RODAK, JR.

No. 73-975

In the Supreme Court of the United States

OCTOBER TERM, 1973

MOTOROLA, INC., PETITIONER

v.

ELMER W. MCLAIN, REGIONAL DIRECTOR,
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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1800 G Street, N.W.,
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The only issue raised by petitioner is whether the court of appeals properly ordered enforcement of the Commission's request for an inspection tour of petitioner's plant facility at 4545 West Augusta Boulevard in Chicago, Illinois. That issue is now moot, for petitioner's counsel has informed the Commission that petitioner has terminated its operations at that facility and the Commission has agreed with petitioner's counsel that it has no further interest in enforcement of its request.

In any event, the decision of the court of appeals was correct. The inspection in question was sought in connection with a charge against petitioner of unlawful employment practices. The Commission by statute is granted "access to * * * any evidence * * * that

relates to unlawful employment practices * * * and is relevant to the charge under investigation." Section 709(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-8(a). The working conditions at a facility can constitute relevant evidence which the Commission is entitled to inspect by means of a tour. Such an inspection would have been relevant to the charge under investigation in this case—that an employee had been denied a supervisory position because of race—because it would have enabled the Commission representative to observe other employees at work and to evaluate the degree of skill and training required for the performance of the supervisory position in question. Congress expressly understood that the Commission would be entitled to such access to the employer's facilities. See 110 Cong. Rec. 2572-2573 (remarks of Congressman Gill). See also *Graniteville Co. (Sibley Division)* v. *Equal Employment Opportunity Commission*, 438 F. 2d 32, 41 (C.A. 4).

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

WILLIAM A. CARY,
General Counsel,
Equal Employment Opportunity Commission.

APRIL 1974.